

IN THE MATTER OF	:	BEFORE THE
<b>THOMAS PALACOROLLA</b>	:	HOWARD COUNTY
Petitioner	:	BOARD OF APPEALS
	:	HEARING EXAMINER
	:	BA Case No. 08-054V

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### **DECISION AND ORDER**

On January 21, 2009, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Thomas Palacorolla for variances to: (1) reduce the 30-foot structure and use setback from a residential district up to zero feet for a sidewalk and up to 6.5 feet for parking uses, and (2) reduce the 30-foot setback from a public street right-of-way to 20 feet (apparently) for one additional parking space, for a mixed-use development in a CAC-CLI (Corridor Activity Center-Continuing Light Industrial Overlay) Zoning District, filed pursuant to Section 130.B.2 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioner provided certification that notice of the hearing was advertised and certified that the property was posted as required by the Howard County Code. I viewed the property as required by the Hearing Examiner Rules of Procedure.

Neil Lanzi, Esquire, represented the property owner. Thomas Palacorolla, John Heinrichs, Kate McCollough, and J. Edward Head, testified on behalf of the Petitioner. No one appeared in opposition to the petition.

### **FINDINGS OF FACT**

Based upon the evidence presented at the hearing, I find as follows:

1. The subject property is located in the 1<sup>st</sup> Election District between the south side of Furnace Avenue and Railroad Avenue. It is referenced on Tax Map 38, Grid 4, as Parcels 420, 421, 422, and 620 and is also known as 5674, 5676, 5678, and 5682 Furnace Road. These properties comprise "Parcel A" of a mixed-use development known as Riverwatch that the Petitioner intends to develop (the "Property").

2. One of the four lots currently comprising the irregularly-shaped Property is improved with an open parking lot, the other three each with a two-story, frame, single family detached dwelling lying close to Furnace Ave. The two northwestern lots (currently Parcels 420 and 421) extend from Furnace Avenue to Railroad Avenue.

3. Vicinal properties. Across Furnace Road to the northeast is the CAC-CLI zoned Parcel 623, which the Petitioner intends to develop as "Parcel B" of Riverwatch. It is currently the site of a multi-building contracting business. The adjoining, CAC-CLI zoned properties to the southeast and southwest are each improved with single-family detached dwelling fronting on either Furnace or Railroad Avenue. The R-12 zoned Parcel 433 to the northwest is improved with a brick church and a paved parking lot in the lot's northeast section. The remainder of Parcel 433 is a graveyard with several plots close to the common lot line with the Property. A long, open, white wooden fence runs along this common lot line.

4. As part of Riverwatch, the Petitioner proposes to construct on the Property two, two-story buildings in its northeast area. The first would be sited close to the Furnace Avenue frontage with commercial space on the first floor and residences on the second. The second entirely residential building would be sited in the Property's southwestern area portion. A parking lot is proposed between the two buildings, with a larger, second lot and sidewalk extending along the

Property's northwestern side adjoining the church property between the Furnace and Railroad entrances. The parking spaces in this last parking lot would encroach about 24 into the 30-foot structure and use setback from a residential district, as required by Section 127.5.D.4.b(1)(a) and the sidewalk would encroach up to about 28 feet into the setback at its closest (near the Furnace Avenue entrance), according to Petitioner's Exhibit 1, the amended variance plan.

5. At the outset of the proceeding, the Petitioner also proposed to amend the variance petition to include a variance from the same 30-foot public street right-of-way setback for the possible addition of one additional parking space near the Railroad Avenue entrance should site program changes require it (Petitioner's Exhibit 1). This parking space would apparently encroach 10 feet into the 30-foot setback.

6. Roads. Furnace Lane has one travel lane in each direction and about 24 feet of paving. The posted speed limit is 25 miles per hour. From the Furnace Avenue entrance driveway, visibility to the northwest is more than 500 feet and to the southeast, about 400 feet.

7. Water and Sewer Service. The Property is served by public water and sewer.

8. J. Edward Head, who serves on the board of directors of the adjoining church, testified the church does not want the current fence along the common lot line to be replaced by a three-foot high closed fence, as the Technical Staff Report ( "TSR") recommends. The Petitioner and Mr. Head agreed to meet the Department of Planning and Zoning to resolve the fencing issue in a mutually agreeable manner.

9. In response to questioning, I stated that owing to the current extraordinary economic climate, I am extending the time that obtain the required permits related to a variance petition by two years.

**CONCLUSIONS OF LAW**

The standards for variances are contained in Section 130.B.2.a of the Regulations. That section provides that a variance may be granted only if all of the following determinations are made:

- (1) That there are unique physical conditions, including irregularity, narrowness or shallowness of the lot or shape, exceptional topography, or other existing features peculiar to the particular lot; and that as a result of such unique physical condition, practical difficulties or unnecessary hardships arise in complying strictly with the bulk provisions of these regulations.
- (2) That the variance, if granted, will not alter the essential character of the neighborhood or district in which the lot is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare.
- (3) That such practical difficulties or hardships have not been created by the owner provided, however, that where all other required findings are made, the purchase of a lot subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.
- (4) That within the intent and purpose of these regulations, the variance, if granted, is the minimum necessary to afford relief.

Based upon the foregoing Findings of Fact, and for the reasons stated below, I find the requested variances comply with Section 130.B.2.a(1) through (4) and therefore may be granted.

1. The first criterion for a variance is that there must be some unique physical condition of the property, e.g., irregularity of shape, narrowness, shallowness, or peculiar topography that results in a practical difficulty in complying with the particular bulk zoning regulation. Section 130.B.2(a)(1). This test involves a two-step process. First, there must be a finding that the property is unusual or different from the nature of the surrounding properties. Secondly, this unique condition must disproportionately impact the property such that a practical difficulty arises in complying with the bulk regulations. See *Cromwell v. Ward*, 102 Md. App. 691, 651

A.2d 424 (1995). A “practical difficulty” is shown when the strict letter of the zoning regulation would “unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.” *Anderson v. Board of Appeals, Town of Chesapeake Beach*, 22 Md. App. 28, 322 A.2d 220 (1974).

In this case, the Property is irregularly shaped and relatively small for a CAC development. Consequently, I find that the Property's shape and size are unique physical conditions causing the Petitioner practical difficulties in complying with the setback requirements, in accordance with Section 130.B.2.a(1).

The proposed parking and sidewalk will be used for permitted business purposes. Because the proposed encroachment is generally along the lot line shared with the church and graveyard, the TSR concludes it could potentially impair the use of the adjacent church, given the insufficient proposed landscape buffer. For this reason, the TSR recommends that as a condition of approval the Petitioner install a low, closed fence along the common lot line, which the church opposes. The proposed landscape buffer would be further diminished by the addition of a parking space encroaching into the landscape median island at the Railroad Avenue entrance.

To ensure compliance with Section 130.B.2.a(4), I am first denying the requested variance for the additional parking space, as shown on Petitioner's Exhibit 1, as it would reduce the already minimal landscape buffering proposed. Additionally, the Petitioner shall consult with the Department of Planning and Zoning at the site development plan phase and mutually determine what buffering is appropriate along the common lot line. Subject to this condition, I conclude the variances initially requested in the petition, if granted, will not alter the essential

character of the neighborhood in which the lot is located, nor substantially impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare, in accordance with Section 130.B.2.a(2).

2. The practical difficulties in complying strictly with the setback regulations arise from the Property's narrowness and location, and were not created by the Petitioner, in accordance with Section 130.B.2.a(3).

3. The TSR implicitly concludes the size of the proposed sidewalk and its location, are the minimally necessary to promote a good pedestrian connection between the mixed-use development and the residential area to the Property's southwest. Within the intent and purpose of the regulations, then, the variances are the minimum necessary to afford relief, in accordance with Section 130.B.2.a(4).

**ORDER**

Based upon the foregoing, it is this 16<sup>th</sup> day of February 2009, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

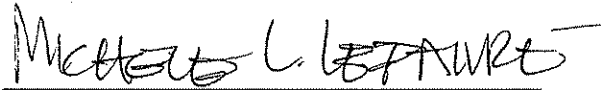
That the Petition of Thomas Palacorolla for a variance to reduce the 30-foot structure and use setback from a public-right-of-way for an additional (one) parking space, as shown on Petitioner's Exhibit 1, is **DENIED**;

That the Petition of Thomas Palacorolla for variances to reduce the 30-foot structure and use setback from a public-right-of-way up to 6.5 feet for parking spaces and up to zero feet for a sidewalk is **GRANTED**;

**Provided, however, that:**

1. The variances will apply only to the uses being requested and not to any new structures, uses, or change in uses on the subject property, to any additions thereto, or to the additional (one) parking space shown on Petitioner's Exhibit 1.
2. The Petitioner shall consult with the Department of Planning and Zoning at the site development phase to determine the landscape buffering and/or type of fence appropriate along the lot line where the sidewalk will be installed.
3. The Petitioner shall obtain the required permits conforming to the plans for which this variance is granted within four (4) years, and substantial construction shall be completed within five (5) years of the date of this Decision and Order.

**HOWARD COUNTY BOARD OF APPEALS  
HEARING EXAMINER**



**Michele L. LeFaivre**

2/20/09

Date Mailed:

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.